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<AGENCY TYPE='S'>DEPARTMENT OF HOMELAND SECURITY

<SUBAGY>Coast Guard

<CFR>33 CFR Part 100

<DEPDOC>[Docket No. USCG-2012-0215]

<RIN>RIN 1625-AA08

<SUBJECT>Special Local Regulation, Underwater Music

Festival, Carr Inlet, Cutts Island, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a Special Local Regulation (SLR) around Cutts Island located in Carr Inlet, WA. This SLR is necessary to ensure the safety of the maritime public during the Underwater Music Festival and would do so by establishing speed and towing restrictions, limiting the number of vessels permitted to raft together and limiting the distance persons are permitted to swim from vessels or shore.

DATES: Comments and related material must be received by the Coast Guard on or before July 17, 2012.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0215 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor,
Room W12-140, 1200 New Jersey Avenue SE, Washington, DC
20590-0001.

(4) Hand delivery: Same as mail address above,

between 9 a.m. and 5 p.m., Monday through Friday, except
Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four
methods. See the "Public Participation and Request for
Comments" portion of the <E T='02'>SUPPLEMENTARY
INFORMATION</E> section below for instructions on submitting
comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on
this proposed rule, call or e-mail ENS Anthony P. LaBoy,
Coast Guard Sector Puget Sound Waterways Management
Division; telephone 206-217-6323, e-mail
SectorPugetSoundWWM@uscg.mil. If you have questions on
viewing or submitting material to the docket, call Renee V.
Wright, Program Manager, Docket Operations, telephone 202-
366-9826.

SUPPLEMENTARY INFORMATION:

<HD1>Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

<HD1>Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0215) indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to

<http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2012-0215" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

<HD1>Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2012-0215" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the

Department of Transportation to use the Docket Management Facility.

<HD1>Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

<HD1>Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under <E T='02'>ADDRESSES</E>. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Ensign Anthony LaBoy at the telephone number or e-mail address indicated under the <E T='02'>FOR FURTHER INFORMATION CONTACT</E> section of this notice.

<HD1>Basis and Purpose

The Underwater Music Festival is an event in which includes musical performances from a barge. Spectators approach the barge in their private recreational vessels to view the concert. This event was first held in 2009 around Cutts Island in Carr Inlet, WA, and has grown substantially since its first year. In 2010 there were approximately 250 vessels and several hundred persons in attendance surrounding the event sponsor barge. In 2011, there were approximately 700 vessels and 3,000 persons in attendance. In 2011, on-scene Coast Guard members observed behaviors that caused concern including vessels traveling at speeds which created wakes, large groups of vessels rafted together, and participants swimming without personal floatation devices (PFD). Regardless of PFD wear, persons swimming too far from land or vessels in an area of high vessel congestion creates a dangerous situation because they are difficult to see by vessels transiting in the area. At other similar marine events, swimmers have suffered injuries such as propeller strikes. Requiring swimmers to stay near land or their vessels will help prevent such injuries because transiting vessels will stay clear of other vessels and land, thereby avoiding even those swimmers that cannot be easily seen. Due to the increasing popularity and number of event participants, a Special Local Regulation (SLR) is

necessary to ensure safety of the event spectators and participants. This rule would mitigate the risk of the event by controlling unsafe actions within the boundaries of the SLR.

<HD1>Discussion of Proposed Rule

The Coast Guard is proposing to establish a SLR, which encompasses all waters within one nautical mile of Cutts Island, WA. By imposing the following restrictions, the Coast Guard will limit the risk to life and property of the marine event participants:

- (a) All vessels would be required to transit at the minimum speed necessary to maintain course, minimizing vessel wakes. Wakes produced by vessels traveling at higher speeds could negatively impact unsuspecting anchored vessels or persons swimming in the vicinity of vessels.
- (b) Towing would not be permitted inside the SLR area unless prior permission was granted by the the on-scene Coast Guard Patrol. This would allow for debris removal by designated vessels and for properly equipped and trained tow vessels to assist disabled vessels while preventing unqualified vessels from creating further unsafe conditions while attempting to assist disabled vessels.
- (c) No more than six vessels would be permitted to

raft together. Large groups of rafted vessels restrict the ability of response and law enforcement vessels to transit and respond to emergencies.

- (d) Any person swimming or otherwise entering the water would be required to remain within 10 feet of a vessel or shore. This ensures participants are able to exit the water under their own means and prevent potential injuries that could be caused by persons in the water being struck by transiting vessels.
- (e) The Coast Guard would maintain a patrol for the duration of this event. The Coast Guard Patrol of this area is under the direction of the Coast Guard Patrol Commander who is empowered to control the movement of vessels inside the regulation boundaries. The Patrol Commander may be assisted by other federal, state, and local law enforcement agencies.

<HD1>Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory

action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard bases this finding on the fact that the proposed Special Local Regulation would be in place for a limited period of time and vessel traffic would be able to transit around the regulated area.

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which may be small entities; the owners and operators of vessels intending to operate in the waters encompassed within the regulated area. The rule would not have a significant economic impact on a substantial number of small entities because the Special Local Regulation will be in

place for a limited period of time and vessel traffic will be able to transit around the regulated area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

<HD1>Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ensign Anthony P. LaBoy at the telephone number or e-mail address indicated under the <E T='02'>FOR FUTHER INFORMATION CONTACT</E> section of this notice.

<HD1>Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

<HD1>Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

<HD1>Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

<HD1>Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure

by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

<HD1>Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

<HD1>Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

<HD1>Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

<HD1>Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

<HD1>Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

<HD1>Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

<HD1>Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969

(NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under <E T='02'>ADDRESSES</E>. This proposed rule involves the establishment of a Special Local Regulation. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping, requirements, Waterways

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: U.S.C. 1233

2. Add § 100.1310 to read as follows:

§ 100.1310 Special Local Regulation, Underwater Music Festival, Carr Inlet, Cutts Island, WA

(1) Effective Period. This rule is effective annually during the Underwater Music Festival which typically occurs in late July or early August.

(2) Regulated Area. The following area is specified as a regulated area: all waters encompassed within one nautical mile of Cutts Island, WA located at approximately 47° 19' 15" N, 122° 41' 15" W.

(3) Special Local Regulations.

(a) The Coast Guard will maintain a patrol consisting of Coast Guard vessels for the duration of this event. The Coast Guard Patrol of this area is under the direction of the Coast Guard Patrol Commander who is empowered to control the movement of vessels inside the boundaries of the regulation during the time in which this regulation is in effect. The Patrol Commander may be assisted by other federal, state, and local law enforcement agencies.

(b) Vessels are required to transit the regulated area at the minimum speed necessary to maintain course, unless required to maintain speed by the Navigation Rules, and shall proceed as directed by the Coast Guard Patrol

Commander.

(c) Only vessels authorized by the Patrol Commander or other law enforcement agencies shall be permitted to engage in towing.

(d) No more than six vessels are permitted to raft together.

(e) Any person swimming or otherwise entering the water shall remain within 10 feet of a vessel or shore.

(4) Notice of Enforcement. The Captain of the Port will provide notice of the enforcement of this Special Local Regulation by all appropriate means to ensure the widest dissemination among the affected segments of the public, as practicable; such means of notification may include but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

DATED: 28 May 2012

K. A. TAYLOR
Rear Admiral, U. S. Coast Guard
Commander, Thirteenth Coast Guard
District

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